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August 30, 2002

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AUG 30 2002

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., SW  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

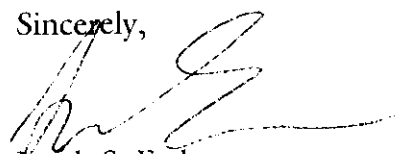
Dear Ms. Dortch:

Attached please find a corrected version of the Request that the Commission Issue a Notice of Proposed Rulemaking (or in the Alternative, Petition for Rulemaking) to Update Dial-Around Compensation Rate ("Petition") originally filed yesterday by the American Public Communications Council. The corrected version includes the attachments to the dial-around cost study that appears as Attachment 1 to the Petition, which were inadvertently omitted from the copies filed yesterday.

We apologize for any inconvenience this may have caused.

Please call me if you have any questions.

Sincerely,



Jacob S. Farber  
Counsel for the American Public  
Communications Council

Enclosure

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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AUG 30 2002

In the Matter of )  
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Request to Update Default Compensation Rate for )  
Dial-Around Calls from Payphones )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REQUEST THAT THE COMMISSION ISSUE A NOTICE OF PROPOSED RULEMAKING  
(OR IN THE ALTERNATIVE, PETITION FOR RULEMAKING)  
TO UPDATE DIAL-AROUND COMPENSATION RATE**

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August 29, 2002

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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AUG 30 2002

In the Matter of )  
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Implementation of the Pay Telephone )  
Reclassification and Compensation Provisions of )  
the Telecommunications Act of 1996 )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REQUEST THAT THE COMMISSION ISSUE A NOTICE OF PROPOSED RULEMAKING  
(OR IN THE ALTERNATIVE, PETITION FOR RULEMAKING)  
TO UPDATE DIAL-AROUND COMPENSATION RATE**

Pursuant to 47 C.F.R. § 1.411, the American Public Communications Council ("APCC") hereby requests that the Federal Communications Commission ("Commission"), on its own motion, issue a notice of proposed rulemaking to establish a new default compensation rate for dial-around calls from payphones.<sup>1</sup> As explained below, APCC is seeking only a change in the rate set forth in Section 64.1300(c) of the Commission's rules (currently \$.24 per call) and is not seeking either a new rule or any other revisions to the current rule.

In setting the \$.24 rate, the Commission stated that the rate would be in effect at least through January 31, 2002, after which a party could petition the Commission to establish a new rate to reflect market changes. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Third Report and Order*, 14 FCC Rcd 2545, 2647-48, ¶ 230 (1999) ("*Third Report and Order*"). As anticipated by the Commission, and as reflected in the attached cost study, market conditions have indeed changed substantially since the *Third Report and Order*, necessitating a revisitation of the \$.24 rate.

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<sup>1</sup> As discussed in section IV below, if the Commission believes that it is appropriate instead to proceed under 47 C.F.R. §§ 1.401-1.407, it should, as soon as is practicable, place this petition on public notice pursuant to 47 C.F.R. § 1.403.

## I. INTRODUCTION AND SUMMARY

Section 276 of the Communications Act of 1934, as amended (“Act”) directs the Commission to “promote the widespread deployment of payphone services to the benefit of the general public.” 47 U.S.C. § 276(b)(1). In carrying out this mandate, Section 276(b)(1) directs the Commission to establish “a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed call.” 47 U.S.C. § 276 (b)(1)(A). The \$.24 compensation rate for dial-around calls established by the Commission more than three years ago in the *Third Report and Order* no longer fairly compensates payphone service providers (“PSPs”) because of dramatically changed market conditions.

As reflected in the attached cost study, prepared for APCC by the economic and regulatory consulting firm of Wood & Wood (the “Dial-Around Cost Study”), the \$.24 dial-around rate is now well below cost and does not provide “fair compensation” to PSPs. This in turn has contributed to a dramatic drop in the deployment of payphones. In order to meet its mandate of promoting the widespread deployment of payphones, and to secure for all Americans the ready access to the public telephone network that payphones provide, it is time for the Commission to revisit the dial-around compensation rate.

In setting the \$.24 rate, the Commission began by determining that “fair compensation” means compensation that allows for full recovery of the associated costs and then developed a model for calculating those costs. That overall approach remains reasonable and APCC does not propose any major departure from the cost model that the Commission developed in the *Third Report and Order*. The accuracy of that model would be improved by updating some of the inputs, for example, to reflect higher costs of capital and shorter depreciation periods incurred by the payphone industry, and by adding a cost category to reflect the increased risk of non-collection of compensation due to carrier bankruptcies. The Wood & Wood study takes a conservative approach, however, adhering to the *Third Report and Order*

model except for the addition of one category to reflect compensation collection costs. The study demonstrates that a substantial compensation rate increase is needed even if no alterations are made to the Commission's *Third Report and Order* model.

The Dial-Around Cost Study attached to this petition (*see* Attachment 1) presents the Commission with updated cost data gathered from APCC's independent PSP membership. It was developed using the Commission's *Third Report and Order* cost model.<sup>2</sup> The study shows that, while some costs have increased, and others have decreased, there has been a marked decrease across the board in the number of calls made from payphones. The dramatic reduction in the number of calls (over which the costs incurred at a payphone must be spread) necessitates a substantial increase in the dial-around compensation rate in order to provide "fair compensation" to PSPs. Using a conservative methodology, APCC's Dial-Around Cost Study concludes that the compensation rate necessary to recover the costs of marginal payphones is \$.484 per call.

## **II. IT IS CRITICAL THAT THE COMMISSION ACT TO ENSURE THE WIDESPREAD DEPLOYMENT OF PAYPHONES**

### **A. Why Payphones Matter**

Congress's directive to the Commission to ensure the "widespread deployment" of payphones reflects the unique and critical role that the approximately two million payphones throughout the country play in providing Americans with access to the public communications network. Unlike the user of a wireless phone or the typical wireline phone, a payphone user does not have to make an upfront investment in equipment, await order processing and credit checks, or pay recurring monthly charges. Payphone service is an on-demand/per-use service; wherever

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<sup>2</sup> As discussed below, APCC's study includes a new input for the cost of collecting dial-around compensation.

there is a payphone there is access to the public communications network. Because of their affordability and widespread availability, payphones are used by all segments of the public to supplement wireless and other wireline services, and are used by millions of Americans as a communications means of last resort.<sup>3</sup>

Even with the boom in wireless communications, most Americans still do not own a wireless phone and many, for financial or other reasons, never will. Thus, for most Americans, payphones are, and for the foreseeable future will continue to be, the only available means of making a call away from the home or office. The need for a payphone could arise on a shopping trip to the local mall, a family vacation to Disney World, or a business trip to New York City. Payphones provide an especially important link to home for people who must be away for long periods – for example, college students or members of the U.S. armed forces. And ready access to a payphone is frequently a matter of critical importance—to report a crime in progress or to summon emergency rescue help.<sup>4</sup>

For the broad cross-section of Americans who rely on payphones for their communications needs when away from the home or office, it is not enough for some minimum number of payphones to remain deployed. Rather, payphones must remain deployed in sufficient numbers to provide effective access to the public network. Consider a payphone that hypothetically requires 400 calls a month to be viable. When the call volume falls to 350 calls, and the payphone is removed, the need for those 350 other calls does not disappear. The need

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<sup>3</sup> See, e.g., Liza Mundy, *Hearing the Call; if you're on the wrong side of the digital divide, what does it take to get by? Thirty-five cents and a glimmer of hope*, The Washington Post Magazine, Sept. 2, 2001 (describing the wide-ranging types of calls made at payphones at an Arlington, Virginia subway station) (attached as Attachment 2).

<sup>4</sup> See, e.g., Barbara Egbert, *It Was a Dark and Stormy Night. Really*, The Mercury News (San Jose, CA), Mar. 6, 2001 (payphones necessity for emergencies) (attached as Attachment 3); Shienne Jones, *Lack of payphones makes campus unnecessarily dangerous*, Daily Reveille (Baton Rouge, LA), Apr. 18, 2001 (attached as Attachment 4).

simply goes unmet and the victim of domestic violence, or abused child, or troubled teen, or stranded motorist or office janitor has no phone to use. In some cases, there may be another payphone nearby that the caller can use instead. But in many cases, the removed payphone could be the only payphone within several blocks, or miles. While a payphone on every corner is not necessary to meet the Congressional mandate of widespread deployment, there do have to be payphones in sufficient numbers to ensure that there are not gaps in deployment that effectively deny potential users access to communications.

Even for the 45% percent of the population that does have a wireless phone,<sup>5</sup> payphones remain a critical supplementary method of accessing the public communications network. Wireless phones often get left at home or the office, have dead batteries, experience weak or non-existent signals, or encounter network congestion. In such circumstances, those who can afford wireless benefit from having a payphone nearby that they can use to satisfy their immediate telecommunications needs, whether for a call back to the office to check voice mail, a call home on personal business or a 911 call to request emergency assistance.<sup>6</sup> In addition, many payphones are equipped to provide Internet access, allowing travelers to stay in e-mail contact with their offices and to otherwise make use of the Internet. While wireless providers are beginning to offer Internet access and the technology driving Wi-Fi broadband access is beginning to mature, for the next several years, payphone-based Internet access is likely to remain the most dependable method of accessing the Internet for travelers on the road.

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<sup>5</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Seventh Report, FCC 02-179 at 20 (July 3, 2002).

<sup>6</sup> *See, e.g., Christopher Boyd, Tuesday's tragedy highlights value of payphones*, Orlando Sentinel (Orlando, FL), Sept. 17, 2001 (describing surge in wireless calls that overwhelmed many wireless networks following the September 11, 2001 terrorist attacks, with result that many people with wireless phones used payphones instead) (attached as Attachment 5).



Payphones are most critical for the third category of user – those who not only cannot afford a wireless phone, but who cannot even afford a home phone. As of November 2000, approximately 6.3 million households do not have a home phone. See Federal and State Staff for the Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, CC Docket No. 98-202 at 6-9 (October 2001). Ready, affordable access to the network through payphones is vital for this group, both for routine day-to-day calls and for emergency communications.<sup>7</sup> As Community Voice Mail, a community service organization, explained in its comments filed in the universal service definition proceeding, its “clients – the homeless, the unemployed, people seeking drug or alcohol abuse counseling and others in distress who are trying to restore order to and reconstruct their lives – rely on payphones as their primary means to meet their communications needs.”<sup>8</sup> For those without a home phone, the removal of a payphone from their neighborhood means that their access to the public telecommunications network has been effectively severed.

The availability of payphones is particularly important for residents of rural areas, small towns, and Tribal Lands.<sup>9</sup> Because payphones are already few and far between in those

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<sup>7</sup> See, e.g., Rob Borsellino, *Yanking pay phones is like pulling the plug on people's lives*, Sun-Sentinel (Palm Beach County, FL), Feb. 22, 2001 (attached as Attachment 6); *The end of the line; the poor and elderly are among those most disadvantaged as pay phones disappear from our streets*, The Record (Bergen County, NJ), May 6, 2001 (attached as Attachment 7); Stephanie Kirchgaessner, *Vanishing from the landscape; Payphones in the US*, Financial Times (London), May 16, 2001 (attached as Attachment 8).

<sup>8</sup> See Letter from Jennifer Brandon to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-45 (Oct. 30, 2001). Community Voice Mail clients also include those who may have a home phone, but who, as in the case of spousal abuse victims, fear to use their home phone and need to rely on ready access to payphones instead.

<sup>9</sup> With regard to payphones on Tribal Lands, see, e.g., Joe Gardyasz, *Shrinking revenues lead to a few less payphones*, Bismarck Tribune (Bismarck, ND), Apr. 11, 2001 (attached as Attachment 9).

areas,<sup>10</sup> the removal of even a single payphone can have devastating consequences for the less affluent members of a community. A recent article in the Los Angeles Times about the impact of payphone removal on small towns offered the following quote:

It doesn't sound really serious when you say 'Take a payphone out here and there' if you live in a city," said Siskiyou County [California] supervisor Bill Hoy. "But when you take one out of a community and it's 10, 20 miles or 100 miles to the next payphone, it's different."<sup>11</sup>

Again, while there does not have to be a payphone on every street corner in a small town or reservation, they must be present in sufficient numbers and in enough locations to be accessible to the people who need them. When the only payphone in a small town is removed, the result is that everyone who relied on that payphone for their communications needs no longer has access to the public communications network.

#### **B. The Accelerating Rate of Payphone Removal**

Today, the ready, affordable access to the network that payphones provide is eroding. The dramatic expansion of wireless services has had the effect of reducing the overall volume of calls made at payphones. As a result, payphones in growing numbers are being removed from locations where they are still needed by the public but no longer attract a sufficient number of calls to remain economically viable.

In 1984, when competition was first introduced in the payphone industry,<sup>12</sup> the number of payphones deployed was about 1.6 million.<sup>13</sup> By 1998, according to Commission

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<sup>10</sup> A table showing payphone density per square mile for the various states is attached as Attachment 10. Not surprisingly, payphone density for many of the largely rural western states is far less than for the smaller, more density populated eastern states.

<sup>11</sup> Bettina Boxall, *Removal of many payphones poses problems for small town residents*, Los Angeles Times, Jan. 22, 2001 (attached as Attachment 11).

<sup>12</sup> See *Registration of Coin Operated Telephones*, Memorandum Opinion and Order, 57 Rad. Reg. 2d (P & F) 133 (1984).

<sup>13</sup> AT&T Bell Laboratories, *ENGINEERING AND OPERATIONS IN THE BELL SYSTEM* (2<sup>ND</sup> Ed. 1983), 76.

data, the number of payphones deployed was about 2.15 million. *See Third Report and Order* at 2629, ¶ 184 n.390. The Commission found that this level of deployment was consistent with Congress's goal of widespread deployment of payphones. *Id.* at 2610, ¶ 143.

After 1998, however, the number of payphones deployed began to drop.<sup>14</sup> At first, the decline was slight. Between 1998 and March 1999, the number of payphones deployed decreased from 2.15 million to 2.12 million, a decrease of a little more than one percent. Between March 1999 and March 2000, however, the number of payphones dropped to 2.06 million, a decrease of about three percent.<sup>15</sup> And, between March 2000 and March 2001, driven by the increase in wireless subscribership, the number of payphones decreased by approximately seven percent, to 1.92 million, a significantly higher rate of decrease than the payphone industry experienced during the preceding two years.<sup>16</sup> Thus, for the overall period from 1998 to March 2001 the total decline has been over 10.5%.

The trend of declining deployment is likely to continue, unless the Commission acts.<sup>17</sup> Increasing the dial-around compensation rate to reflect current costs is a critical step in reversing this negative trend and promoting the widespread deployment of payphones.

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<sup>14</sup> Although wireless has grown rapidly since its inception in 1985, it was in 1998, when wireless carriers introduced nationwide flat rate plans, that the demand for wireless really exploded. In the last three years, the number of wireless customers has nearly doubled, from about 60 million in mid-1998 to almost 120 million in mid-2001. *See Cellular Telecommunications & Internet Association, Twelve-Month Wireless Industry Survey Results (June 1985 to June 2001)* (attached as Attachment 12).

<sup>15</sup> *See* "Comparison of Payphone Deployment (1999-2001)" attached as Attachment 13. This analysis is based on Commission data that may underreport the full extent of the decline in payphone deployment for the period in question, and does not capture at all the continued decline in the year and a half since March 2001.

<sup>16</sup> *Id.* To appreciate this trend toward the removal of payphones, one need only glance at the growing number of empty backplates on payphone banks at airports and elsewhere. For example, at the payphone bank in the lobby at the Commission's offices, there are backplates for nine payphones, yet only five payphones are installed.

<sup>17</sup> *See, e.g.,* Duwayne Escobedo, *Will payphones become extinct?*, Northwest Florida Daily News (Fort Walton Beach, FL), Apr. 15, 2001 (attached as Attachment 14).

### **III. THE COMMISSION SHOULD SET A NEW DIAL-AROUND RATE BY UPDATING THE COST MODEL IT ADOPTED IN THE *THIRD REPORT AND ORDER***

#### **A. Background: the “Bottom-up” Cost Model**

The Commission, in the *Third Report and Order*, adopted a cost-based methodology for calculating the dial-around compensation rate. Under this methodology the Commission used a “bottom-up” approach in which it started from zero and added up the costs of compensable coinless calls. This was a significant departure from the Commission’s previous methodology for computing the compensation rate. Under the Commission’s previous “top-down” approach, which the Commission had adopted in the *Second Report and Order*,<sup>18</sup> the Commission set the compensation rate by starting with the market rate for local coin calls (then \$.35), subtracting costs directly attributable to local coin calls, and adding costs specific to dial-around compensable calls. However, in *MCI Telecomm. Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998), the United States Court of Appeals for the District of Columbia Circuit, found fault with this “top-down” approach and remanded back to the Commission the portion of the *Second Report and Order* that set the dial-around compensation rate. The *Third Report and Order*, and the adoption therein of the bottom-up cost-based approach, was the Commission’s response to the court’s remand. On subsequent review, the *Third Report and Order*’s bottom-up methodology was upheld by the D.C. Circuit. See *American Public Communications Council v. FCC*, 215 F.3d 51, 58 (D.C. Cir. 2000).

The Commission’s cost-based methodology is relatively straightforward. The compensation rate is calculated so that the joint and common costs of payphone operations are

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<sup>18</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Report and Order, 13 FCC Rcd 1778 (1997).

recovered in an equal portion from each and every call.<sup>19</sup> Joint and common costs are those that do not vary with the mixture of calls at the payphone. Thus, for example, coin collection costs are not joint and common because they vary depending on how many coin calls are placed at the payphone. The Commission identified five categories of joint and common costs. These include payphone capital expenditures; line charge costs; maintenance costs; sales, general and administrative (“SG&A”) costs; and FLEX ANI costs. The Commission determined that the sum of those costs was \$101.29 per month, per payphone.

To translate the total monthly cost of \$101.29 per payphone into a per call rate requires dividing by a particular number of calls. In the *Third Report and Order*, the Commission affirmed the use of the number of calls at a “marginal” payphone location, which the Commission defined as one “where the payphone operator is able to just recoup its costs, including earning a normal rate of return on the asset, but is unable to make payments to the location provider.” *Third Report and Order* at 2607, ¶ 139. The Commission found that the use of a marginal payphone, as opposed to an average payphone was “necessary to fairly compensate PSPs and ensure the widespread deployment of payphones.” *Id.* at 2608, ¶ 141. The Commission found that “basing the default compensation amount on an average payphone location would cause many payphones with less-than-average call volumes to become unprofitable,” which would in turn lead to the removal of existing payphones in contravention of the Commission’s mandate to ensure their “widespread deployment.” *Id.* at 2608-09, ¶ 141. Basing the default compensation amount on marginal payphones, however, “should promote the

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<sup>19</sup> While the compensation rate should also recover the marginal cost of placing a dial-around call, the Commission concluded that no such costs existed or were so small as to be insignificant. *Third Report and Order* at 2631, ¶ 190.

continued existence of the vast majority” of the existing base of payphones, which the Commission found is consistent with Congress’s directive. *Id.* at 2571, ¶ 59, 2609, ¶ 141.

Relying on data submitted by a coalition of Regional Bell Operating Company payphone operations (the “RBOC Coalition”), the Commission determined that the typical “marginal” payphone at the time of the *Third Report and Order* had a call volume of 439 calls per month. *Id.* at 2614, ¶ 151 n.202. Dividing \$101.29 by 439 calls yielded a per call figure of \$0.231. The Commission added \$0.009 to this figure to provide interest to PSPs to compensate them for the four month time delay inherent in the dial-around compensation process, for a total of \$ .24 per call. *Id.* at 2615, ¶ 153.

Significantly, the Commission declined to include in its cost model any elements for dial-around collection costs or for uncollectables (bad debt). The Commission concluded that it is “faced with insufficient information on the record to determine the extent to which administrative costs vary when the number of coinless calls increases relative to coin calls.” *Id.* at 2620, ¶ 163.

The Commission, in the *Third Report and Order*, anticipated that the values of the data used to calculate the cost of dial-around calls would change over time. As a result, the Commission determined that the \$.24 rate would “serve as the default per-call compensation price for coinless payphone calls through January 31, 2002.” *Third Report and Order* at 2647, ¶ 230. After January 31, 2002, parties “may petition the Commission regarding the default amount” so that it can be adjusted to reflect “expected resultant market changes.” *Id.*

In light of market changes, the time has come to adjust the dial-around compensation rate. As reflected in the Dial-Around Cost Study, with costs at marginal payphones averaging \$.485 per call, the current rate of \$.24 is no longer providing cost recovery for independent PSPs and is therefore no longer adequate to ensure the widespread deployment of payphones.

**B. The Dial-Around Cost Study Demonstrates the Need to Update the Data Used in the *Third Report and Order* to Calculate the Dial-Around Compensation Rate**

In order to update the data used in the Commission's marginal payphone cost model, APCC commissioned Wood & Wood to prepare a cost study based on a survey of APCC's independent PSP membership. As more fully described in the Dial-Around Cost Study itself, a database maintained by APCC's dial-around collection billing aggregator subsidiary containing over 400,000 independent payphones was used to generate a random sample of independent PSPs' payphones. See Dial-Around Cost Study, § D.4.1. The sampling was designed to be statistically valid and to ensure a proper geographic weighting. *Id.* A survey was sent to the owners of each of the payphones in the sample, requesting detailed information regarding the costs incurred by, and the calls made from, the payphones in question. *Id.*, §§ D.4.2, D.5.2, D.5.3. Responses representing a total of 410 payphones were returned.

The survey asked a series of questions concerning whether any commissions are currently paid by the independent PSP to the location owner. Based on responses to those questions, 108 marginal payphones (i.e. those for which no commissions are paid to the location owner) were identified from among the 410 payphones for which responses were received. *Id.*, § C.3. Only those marginal payphones were used in the cost analysis underlying the rate proposed by this petition. This ensures that the proposed rate reflects the actual costs incurred at, and calls made from, marginal payphones, as required under the Commission's *Third Report and Order* methodology.

When the per-payphone costs in the various cost categories examined by the Commission in the *Third Report and Order* are compared with the corresponding costs for the same categories developed in APCC's cost study, it is apparent that the per-payphone costs have not changed dramatically. Some of the per-payphone costs have increased and some have decreased. Overall, for the marginal payphones included in the Dial-Around Cost Study, total

costs for the cost categories included in the Commission's model were \$107.32 per month, or roughly 6% higher than the \$101.29 in total costs found by the Commission in the *Third Report and Order*. See Attachment 1, Dial-Around Cost Study, § E.2.0.

In contrast to the relatively stable per-payphone costs, the cost study shows a precipitous decline in call volumes. Call volumes at marginal payphones fell by nearly half, to 234 from the 439 found by the Commission in the *Third Report and Order*. See Attachment 1, Dial Around Cost Study, § E.2.0. It is this decline in the number of calls per payphone (and therefore in the number of calls over which costs must be spread), that accounts for most of the increase in per-call costs, and compensation, in the dial-around compensation rate needed to recover those costs.

### **C. A New Element Should Be Added for Collection Costs**

In addition to updating call volumes and the other inputs to the Commission's cost model, the Commission should add an element for collection costs.<sup>20</sup> As discussed above, the Commission considered, and decided against, including such an element in the *Third Report and Order*. The Commission, however, did not reject out of hand the appropriateness of including collection costs. Rather, the Commission found that it had "insufficient information on the record to account" for the costs and to project them in the future. *Third Report and Order* at 2620, ¶ 163.

Now, nearly three and half years later, more than adequate information is available. Collection costs can be divided into two categories. The first is the cost of the routine billing,

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<sup>20</sup> As for uncollectables, or bad debt, APCC's cost study has partially addressed this problem by utilizing only *paid* dial-around calls in determining the call volumes generated at a marginal payphone. Thus, per-call costs reflect the cost per paid call. This approach, however, addresses the uncollectables' problem only in part, and results in a conservative estimate of costs per call. To address the problem fully it would be necessary to, among other things, account for the likelihood of future events such as bankruptcies that substantially reduce the number of paid dial-around calls.



collecting, and processing of dial-around payments. Most independent PSPs do not perform these functions themselves, but instead contract dial-around collection out to third party billing aggregators. APCC Services, Inc., APCC's for-profit dial-around collection billing aggregator is the largest, representing some 400,000 payphones. APCC Services charges its customers fees to submit their dial-around payment requests to the interexchange carrier dial-around payment aggregator, and then collect and remit the payment. The Wood and Wood study includes these fees in collection costs but excludes individual PSPs' record-keeping costs, resulting in a conservative estimate of routine collection costs.

The second category of collection costs comprises the costs resulting from the litigation necessary to collect from many carriers who have failed to meet their payment obligations. The independent payphone industry currently has separate active cases in the United States District Court for the District of Columbia against AT&T, Cable & Wireless, Sprint, and Qwest to collect unpaid dial-around compensation. Cases against WorldCom and Global Crossing are also pending, but have been suspended due to their respective bankruptcy filings. The AT&T case, which was the first to be filed, has been pending for three years. Over a half million pages of documents have been produced and the case still has not been set for trial. It is all too likely that the cases against the other carriers, which were filed more recently, will follow the same trajectory. If all of the cases do in fact proceed along the AT&T path and develop into full-scale litigation, the costs will be enormous.

In addition to the court cases pending against the major IXC's, the independent PSP industry has also filed several court cases as well as dozens of complaints at the Commission against various resellers who have refused to meet their dial-around obligations. While much smaller in scale than the cases against the major carriers, these court cases and complaint proceedings represent a significant drain on resources. Even the smallest complaint proceeding

can generate thousands of dollars in legal fees because many of the reseller defendants have been completely uncooperative, in many cases refusing to even make an appearance.<sup>21</sup> As only the carriers have the call information necessary to calculate the amount of dial-around compensation they owe, often the only way to determine that a case is too small to warrant prosecution is to litigate it to a point where the reseller is forced to come forward with the information.

Based on information provided by APCC regarding collection fees and litigation costs, the Wood and Wood study has estimated that average collection fees and litigation costs total \$.007 per call.

**D. APCC's Cost Study Does Not Include Adjustments to Reflect the Risk of Higher Uncollectables from Carrier Bankruptcies**

Apart from adding a category for collection costs, APCC's cost study adheres to the cost categories and inputs used by the Commission in the *Third Report and Order*. As a result, the study does not include adjustments for a number of factors that increase PSPs' total costs. As mentioned above, WorldCom and Global Crossing have both recently filed for bankruptcy. As a result of the two filings, independent PSPs lost more than an entire quarter of dial-around payments from each carrier, a loss totaling more than \$10 million. Given the state of the telecommunications industry, it is likely that other long distance carriers will enter bankruptcy in the future. Any such filings will, like the WorldCom and Global Crossing filings, result in lost dial-around collection payments. In order to fully reflect such risks of loss, a factor would need to be added to reflect the likelihood of future carrier bankruptcies or similar events that dramatically increasing the rate of non-payment by IXC's. Because APCC's cost study adheres to the *Third Report and Order* cost model, and does not include these and other factors that

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<sup>21</sup> See, e.g., *APCC Services, Inc. et al., v. TS Interactive, Inc.*, File No. EB-02-MD-012 (filed April 19, 2002); *APCC Services, Inc. et al., v. Network IP, Inc.*, File No EB-02-MDIC-0017 (filed March 29, 2002); *APCC Services, Inc. et al., v. American International Telephone, Inc.*, EB-02-MDIC-0023 (filed March 29, 2002).

would improve the accuracy of the model,<sup>22</sup> APCC's study reaches a conservative result that significantly understates the actual costs of dial-around calling.

#### IV. RELIEF REQUESTED

In light of the Commission's statutory mandate to ensure the widespread deployment of payphones and to arrest the currently declining levels of deployment, the Commission should act expeditiously to set a new dial-around compensation rate that reflects current market conditions. Accordingly, pursuant to 47 C.F.R. § 1.411, the Commission should issue, on its own motion, a notice of proposed rulemaking that seeks comment on the Dial-Around Cost Study. Alternatively, if the Commission believes that it is appropriate to comply with the petition for rulemaking procedures set out at 47 C.F.R. §§ 1.401-1.407, it should, as soon as is practicable, place this petition on public notice pursuant to 47 C.F.R. § 1.403.

Respectfully submitted,



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<sup>22</sup> For example, the study does not adjust the depreciation rate used in the *Third Report and Order* model, to reflect the shorter depreciation periods actually prevailing in the payphone industry, and does not adjust the capital cost to reflect the substantially higher risk incurred by investors in payphone companies as compared with investors in local exchange carriers.